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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/601,912

06/23/2003

Richard L. Antrim

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EXAMINER

KHARE, DEVESH

ART UNIT

PAPER NUMBER

1623

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary**Application No.**

10/601,912

Applicant(s)

ANTRIM ET AL.

Examiner

Devesh Khare

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 34 and 35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 34 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The Brief on Appeal received on 11/16/2006 has been considered. Claims 11-33 have been cancelled by previous amendment.

1. In view of the Appeal brief filed on 10/11/2006, PROSECUTION IS HEREBY REOPENED. The Final rejection of claims 1-10, 34 and 35 under 35 U.S.C. 112, second paragraph and 35 U.S.C. 102(b) of the Office Action dated 8/16/2006 has been withdrawn by the examiner in response to the applicant's response in the appeal brief filed on 10/11/2006. During the course of reconsideration of the application, a prior art reference not previously disclosed by the applicants or the examiner came to light. See the rejection as set forth below.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:


SHAOJIA ANNA JIANG, PH.D.
SUPERVISORY PATENT EXAMINER

Claims 1-10, 34 and 35 are currently pending in this application.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Meyers et al. (U.S. Patent 5,518,739).

Meyers et al anticipate the claims as it teaches a maltodextrin having degree of polymerization between 4 and 27 (col.3, line 21). Meyers et al also disclose maltodextrin derivatized with dextrin via glycosidic linkages such as α -1,6, β -1,2, β -1,3 and β -1,6 (col.3, lines 22-24). It is inherent property of a dextrin to exist in the form of dextrose, maltose (two dextrose attached with each other), maltotriose (three dextrose attached with each other), and maltotetraose (four dextrose attached with each other). Myers et al also disclose the hydrogenated starch hydrolyzate known as sorbitol (col.3, lines 49-50). Thus, this meets the process limitations.

Regarding new claim 35, the new limitation of how the extrusion reaction is performed does not have any patentable weight to the composition claimed in claim 1.

Claims 1-5, 7-10, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshida et al. (U.S. Patent 4,840,807).

Yoshida et al anticipate the claims as it teaches a maltodextrin having degree of polymerization between 1 and 20 (col.5, line 30). Meyers et al also disclose maltodextrin derivatized with dextrin via glycosidic linkages such as α -1,6 and α -1,4 (claim 1). Dextrin is disclosed in the form of dextrose, maltose (two dextrose attached with each other), maltotriose (three dextrose attached with each other), and maltotetraose (four dextrose attached with each other) (col 7, lines 54-62). Thus, this meets the process limitations.

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Regarding new claim 35, the new limitation of how the extrusion reaction is performed does not have any patentable weight to the composition claimed in claim 1.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 7-10, 34 and 35 are rejected under 35 U.S.C. 102(e) as being anticipated by Fouache et al. (U.S. Patent 6,630,586).

Fouache et al anticipate the claims as it teaches a branched maltodextrin having degree of polymerization lower than 5 (abstract). Fouache et al also disclose maltodextrin derivatized with dextrin via glycosidic linkages such as 1,2; 1,3; 1,4; and 1,6 (Col.8, Tables I and II). It is inherent property of a dextrin to exist in the form of dextrose, maltose (two dextrose attached with each other), maltotriose (three dextrose attached with each other), and maltotetraose (four dextrose attached with each other). Thus, this meets the process limitations.

Regarding new claim 35, the new limitation of how the extrusion reaction is performed does not have any patentable weight to the composition claimed in claim 1.

Regarding claims 1 and 35, the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

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Any inquiry concerning this communication or earlier communications from the

Examiner should be directed to Devesh Khare whose telephone number is (571)272-0653. The examiner can normally be reached on Monday to Friday from 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anna Jiang, Supervisory Patent Examiner, Art Unit 1623 can be reached at (571)272-0627. The official fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Devesh Khare, Ph.D.,J.D.
Art Unit 1623


Anna Jiang, Ph.D.
Supervisory Patent Examiner
Technology Center 1600

February 5, 2007